

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

IN RE: BLUE CROSS BLUE SHIELD CASE NO.: 2:13-cv-20000-RDP  
ANTITRUST LITIGATION MDL 2406

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STATUS CONFERENCE

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BEFORE THE HONORABLE R. DAVID PROCTOR, UNITED STATES  
DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA, in the Law  
Offices of Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 8th  
Avenue, New York, New York, on Tuesday, September 14, 2021,  
commencing at 9:33 a.m. Eastern Time.

APPEARANCES:

SPECIAL MASTER: Edgar C. Gentle III  
Attorney at Law  
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Hoover, Alabama 35244

IN PERSON: Robert J. Axelrod  
Katherine Harbison Benson  
David Boies  
Swathi Bojedla  
John D. Briggs  
Carl S. Burkhalter  
Warren T. Burns  
Elizabeth C. Chavez  
Kathleen Currie Chavez  
Evan Chesler  
Charles J. Cooper  
Phillip F. Cramer  
Karin DeMasi  
Sarah M. Gilbert  
Michael David Hausfeld  
Christopher T. Hellums  
E. Desmond Hogan

1 APPEARANCES, Continued:

2 IN PERSON: Zachary D. Holmstead  
3 Craig A. Hoover  
4 Hamish P. M. Hume  
5 Megan Jones  
6 Edith M. Kallas  
7 Eamon P. Kelly  
8 Lauren R. Kennedy  
9 Daniel E. Laytin  
10 David Markewitz  
11 W. Daniel Miles III  
12 Scott Nehs  
13 Dennis G. Pantazis  
14 Gwendolyn C. Payton  
15 Barry A. Ragsdale  
16 Robert B. Roden  
17 Robin Sanders  
18 Paul E. Slater  
19 Kathleen Taylor Sooy  
20 Todd M. Stenerson  
21 Joe R. Whatley Jr.  
22 Helen E. Witt  
23 Edward Kirk Wood Jr.

24 VIA VIDEOCONFERENCE: Alexander McInnis Boies  
25 Vincent J. Colatriano  
Gregory L. Davis  
Augusta S. Dowd  
David J. Guin  
Michael E. Gurley Jr.  
Mark Montgomery Hogewood  
William A. Isaacson  
Patrick McDowell  
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Adam R. Shaw  
Jonathan M. Shaw  
Robert K. Spotswood  
Jason J. Thompson  
Michael Velezis  
J. Mark White  
Amy E. Willbanks  
Jason A. Zwieg

25 (Other counsel were present via telephone but not identified)

1 Proceedings reported stenographically via remote  
2 videoconference; transcript produced by computer.

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4 (The following proceedings were heard before the  
5 Honorable R. David Proctor, United States District Judge for the  
6 Northern District of Alabama, at the Law Offices of Cravath,  
7 Swaine & Moore LLP, New York, New York, on Tuesday, September  
8 14, 2021, commencing at 9:33 a.m. Eastern Time:)

9 THE COURT: All right. Thanks so much. Good morning,  
10 everyone.

11 COUNSEL IN UNISON: Good morning, Your Honor.

12 THE COURT: We're here in Blue Cross Blue Shield  
13 Multi-District Litigation, and we're here for purposes of a  
14 status conference.

15 We appreciate our friends here at Cravath hosting us.  
16 What a nice, nice facility. Great staff. Great welcome and  
17 support we've been given.

18 We've got an agenda that was proposed by the special  
19 master for the plenary session and also for -- just to have  
20 caucuses after. Is there an agreement that we can caucus with  
21 the groups after the plenary session is concluded today?

22 MR. BOIES: Yes, Your Honor.

23 MR. WHATLEY: Yes, Your Honor.

24 THE COURT: All right. Super.

25 All right. First item on the agenda for this status

1 conference is status of the providers and Blues litigation.

2 Mr. Whatley?

3 MR. WHATLEY: Yes, sir.

4 Judge, we -- both sides have met the schedule. We have  
5 one more round of briefs due September 20th. And what we have  
6 talked about and what we would suggest is thereafter, we meet  
7 and confer together to come up with a schedule for addressing  
8 the motions and -- and advancing the litigation. We also --  
9 from the providers' standpoint, we think that there should be a  
10 place in that for class certification; but we'll meet and confer  
11 about that and report back to you.

12 We'd suggest, since the briefs are due the 20th, that  
13 we report back to you by the end of the month, which would give  
14 us ten days. That's not a magic date, but that kind of period  
15 to report back to you with a proposed schedule for addressing  
16 the motions and -- and other issues.

17 THE COURT: All right.

18 MR. CHESLER: I'd just say that's all satisfactory with  
19 us, Your Honor.

20 THE COURT: All right. Mr. Chesler, thank you.

21 MR. WHATLEY: Oh, Judge, one other thing.

22 THE COURT: Yes.

23 MR. WHATLEY: We filed a complaint yesterday for  
24 Dr. Reyes.

25 THE COURT: I noticed that.

1 MR. WHATLEY: She is a person who's exempt from *Love*.  
2 It's a belt-and-suspenders kind of thing. It's not --

3 THE COURT: Is that a placeholder case -- in other  
4 words, taking the place of another case? -- or just a separate  
5 action?

6 MR. WHATLEY: No. No, sir. It's just a potential  
7 additional class representative for the doctors in Alabama who  
8 are exempt from *Love*.

9 THE COURT: All right.

10 MR. WHATLEY: And so it's really a belt-and-suspenders  
11 additional plaintiff, additional possible class representative.  
12 And it wasn't -- contrary to my friend, Craig Hoover, it wasn't  
13 meant for -- to be anything else.

14 MR. HOOVER: We'll see about that.

15 THE COURT: All right. Fair enough.

16 All right. What else on providers/Blues litigation?  
17 Anything from the Blues, in particular?

18 MR. CHESLER: No, Your Honor. I think what you just  
19 heard is exactly what we would be telling the Court if we were  
20 up there.

21 THE COURT: All right. Thank you.

22 All right. How about other matters? I have another  
23 matter, but I wanted to see if you have another matter.

24 One of the things I'd like to do today is -- obviously,  
25 we have objections. We have a fairness hearing coming up.

1 We -- is Mr. Slater in here?

2 Yes. There you are. Thank you.

3 MR. SLATER: Standing behind you.

4 THE COURT: Sorry. Nearsightedness.

5 I'm not going to get in -- discuss with anyone the  
6 merits of any objections today. I would like the freedom, if  
7 the parties will so indulge me, to discuss with you in these  
8 upcoming caucus sessions whether there are efforts to see if the  
9 objections can be worked through by the parties and, if so, what  
10 that might look like.

11 Anyone given heartburn by that suggestion?

12 UNIDENTIFIED MALE: No, Your Honor.

13 THE COURT: Again, we're not going to get into the  
14 merits in any way. One, that's the cardinal rule; we just don't  
15 address merits in these caucus sessions. But two, particularly  
16 when we've got objectors who are not here and -- maybe one  
17 representative of some of the objectors is here but not  
18 necessarily all the objectors -- we just don't need to discuss  
19 those on the merits in any way.

20 Yes, Mr. Laytin.

21 MR. LAYTIN: (Inaudible)

22 THE COURT: All right. Very well.

23 Date of the next status conference. I'm thinking the  
24 next status conference probably ought to occur after the  
25 fairness hearing. I don't know that it makes a lot of sense to

1 hold a status conference before October 20, so we're probably  
2 looking at a November status conference, skipping a month.

3 Is that satisfactory with everyone?

4 MR. BOIES: Yes.

5 THE COURT: If I do need to talk with some or all of  
6 you, we can always arrange a phone conference. And vice versa.  
7 If there's something that comes up, I think you know that I try  
8 to be pretty flexible with you. Just contact Ed or Sally and  
9 indicate that you need to get on the phone with me or even Zoom  
10 with me, whatever the case may be.

11 MR. WHATLEY: With Zoom, we can even Zoom without a  
12 mask.

13 THE COURT: That's right. That's right.

14 What else do we need to take up for right now?

15 I guess the location changes, but the length of the  
16 plenary sessions generally does not.

17 Okay. Well, thank you. I appreciate everyone being  
18 here.

19 Boy, I tell you, New York is interesting right now  
20 because I think this is the least traffic I've seen in any visit  
21 I've ever made to New York, but there's still enough hustle and  
22 bustle out there that you feel like you're in New York. So I  
23 told Ed this morning it's the perfect sweet spot, it seemed to  
24 me, last night when we were here.

25 But I appreciate each one of you. I always want to say

1 this. Appreciate the great lawyering that we get in this case.  
2 In some ways, that makes my job a lot easier; in some ways, it  
3 makes it more difficult; but I do appreciate it.

4           Okay? We'll move to our caucus sessions. I think our  
5 first caucus session is scheduled at ten a.m. with the  
6 subscribers. I think we'll probably stick to that schedule  
7 because we have potential Zoom and other participants; right?  
8 And that way, we can kind of stay on the schedule that we've  
9 laid out for them, in case they have scheduling needs too. All  
10 right?

11           We'll see the subscribers at ten; the Blues, then, at  
12 10:30; the Blues and the providers together at eleven; the  
13 providers at 11:30. And then I'd like to add one caucus  
14 session, and that would be the Blues, subscribers, and objectors  
15 at noon, if I may do that. Okay?

16           All right. Thank y'all. We'll be adjourned.

17           (Proceedings concluded at 9:41 a.m. Eastern Time)

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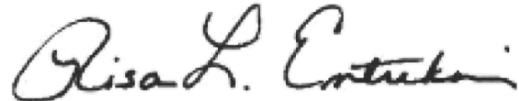
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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

This 17th day of September, 2021.



Risa L. Entrekin  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter